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USA v. Bentley

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1935

UNITED STATES OF AMERICA

v.

TYRONE BENTLEY,
a/k/a TYRONE HARRIS

Tyrone Bentley,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 97-cr-00445)
District Judge: The Honorable Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
May 28, 2004

Before: SCIRICA, Chief Judge, FISHER and ALARCÓN,* Circuit Judges.

(Filed June 2, 2004)

OPINION OF THE COURT

*The Honorable Arthur L. Alarcón, Senior Judge, United States Court of Appeals for the Ninth Circuit, sitting by designation.

FISHER, Circuit Judge.

Tyrone Bentley claims, for the first time on this appeal, that he should not have received a two-level upward adjustment in his offense level pursuant to U.S.S.G. § 3C1.2. The standard of review is plain error. Fed. R. Crim. P. 52(b); *United States v. Torres*, 209 F.3d 308, 313 (3d Cir. 2000).

The government concedes that the sentencing enhancement pursuant to U.S.S.G. § 3C1.2 should not have been applied in this case, as the defendant was fleeing from armored car employees, not law enforcement officials.

The government agrees that the erroneous application of § 3C1.2 warrants a remand to permit resentencing. We will therefore vacate the judgment of sentence in this case and remand the matter for resentencing.
